Supreme Court, U.S.
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(9)

No. 05-352

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

CUAUHTEMOC GONZALEZ-LOPEZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: SEPT. 16, 2005
CERTIORARI GRANTED: JAN. 6, 2006

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

No. 4:03-cr-00055-SNL-ALL

UNITED STATES OF AMERICA, PETITIONER

v.

CUAUHTEMOC GONZALEZ-LOPEZ

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
01/08/2003	6	MOTION for Order for Leave to Appear Pro Hac Vice as to defendant Gonzalez-Lopez by John Fahle with Memo to Clerk attached. [4:03-m-7015] (CF) (Entered: 01/10/2003)
		* * * * *
01/09/2003	9	APPEARANCE for defendant Cuauhtemoc Gonzalez-Lopez by Attorney John Fahle [4:03-m-7015] (CF) (Entered: 01/10/2003)
		* * * * *
01/29/2003	16	INDICTMENT (referred to Mag Judge Thomas C. Mummert) by USA; Counts filed

DATE	DOCKET NUMBER	PROCEEDINGS
		against Cuauhtemoc Gonzalez-Lopez (1) count(s) 1, 7, Jorge Alberto Guillen (2) count(s) 1, 2, 7, Rodriquez Woods (3) count(s) 1, 2, 3, 4, 7, Dewayne Welch (4) count(s) 1, 2, 7, Julio Cesar Guillen (5) count(s) 1, 5, 7, Jorge E. Guillen (6) count(s) 1, 5, 7, Ubaldo N. Izaguirre-Carranza (7) count(s) 1, 6, 7, Margarito Antonio Beltran (8) count(s) 1, 7 (SET) (Entered: 01/30/2003)
		* * * * *
03/17/2003	143	MOTION for attorney Joseph Low to appear pro hac vice as to defendant Cuauhtemoc Gonzalez-Lopez by Cuauhtemoc Gonzalez-Lopez (BAK) (Entered: 03/18/2003)
		* * * * *
03/18/2003	148	RULED DOCUMENT by Honorable Jean C. Hamilton denying motion for attorney Joseph Low to appear pro

DATE	DOCKET NUMBER	PROCEEDINGS
		hac vice as defendant Cuauhtemoc Gonzalez-Lopez [143-1] (cc: all counsel, USPT, USP, USM) (BAK) (Entered: 03/19/2003)
		* * * * *
04/14/2003	177	MOTION for attorney Joseph Hawkins to appear pro hac vice as to defendant Gonzalez-Lopez by Cuauhtemoc Gonzalez-Lopez (CEL) (Entered: 04/14/2003)
04/14/2003	178	RULED DOCUMENT by Honorable Jean C. Hamilton denying motion for attorney Joseph Hawkins to appear pro hac vice as to defendant Gonzalez-Lopez [177-1] (cc: all counsel, USPT, USP, USM) (CEL) (Entered: 04/14/2003)
04/14/2003	179	MOTION for attorney substitution as to defendant Gonzalez-Lopez re: Joseph Low to replace Kurt Wolfgram and John Fahle by Cuauhtemoc Gonzalez-Lopez (CEL) (Entered: 04/14/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
04/14/2003	180	RULED DOCUMENT by Honorable Jean C. Hamilton denying motion for attorney substitution as to defendant Gonzalez-Lopez re: Joseph Low to replace Kurt Wolfgram and John Fahle [179-1] (cc: all counsel, USPT, USP, USM) (CEL) (Entered: 04/14/2003)
		* * * * *
04/25/2003	183	MOTION to continue as to defendant Gonzalez-Lopez, to withdraw attorney , and for order show cause hearing by Cuauhtemoc Gonzalez-Lopez (CEL) (Entered: 04/28/2003)
		* * * * *
04/25/2003	185	MINUTES: before Honorable Jean C. Hamilton re [183-1], re [183-2], re [183-3] as to defendant Gonzalez-Lopez: Parites present for motion to withdraw as counsel; deft pro se granted until

DATE	DOCKET NUMBER	PROCEEDINGS
		5/5/03 to retain new counsel; Counsel must file entry of appearance by 5/5/03; ruling on the motion to withdraw held in abeyance; Speedy trial waived only to 7/7/03 to cover pre time for new atty; Interpreter: Juan Morales Defendant Location: custody court reporter: Shannon McCreary; proceedings started: 10:00am - ended: 10:25am (CEL) (Entered: 04/28/2003)
		* * * * *
04/30/2003	187	LETTER from USCA re: petition for writ of mandamus filed by atty Low on behalf of deft. Gonzalez-Lopez (CEL) (Entered: 05/01/2003)
		* * * * *
05/02/2003	188	APPEARANCE for defendant Cuauhtemoc Gonzalez-Lopez by Attorney Karl W. Dickhaus (CEL) (Entered: 05/06/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
05/08/2003	189	ORDER as to defendant Gonzalez-Lopez by Honorable Jean C. Hamilton re [183-1], re [183-2], ORDERED that atty Fahle's motion for hearing to show cause why Joseph Low should not be subject to sanctions by this court for interfering with atty/client relationship is set for 5/20/03 at 10:00am. FURTHER ORDERED that deft Gonzalez-Lopez shall be present at the hearing. FURTHER ORDERED that the Clerk is directed to service notice of the hearing on attys of record, John Fahle and Joseph Hawkins Low IV. [183-3] ; in-court hearing set for 10:00 5/20/03 for Cuauhtemoc Gonzalez-Lopez (cc: all counsel, USPT, USP, USM and attys Fahle and Low) (CEL) (Entered: 05/08/2003)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
05/08/2003	190	ORDER as to defendant Gonzalez-Lopez by Honorable Jean C. Hamilton granting motion to continue as to defendant Gonzalez-Lopez [183-1], granting motion to withdraw attorney [183-2] withdrawing attorney John Fahle for Cuauhtemoc Gonzalez-Lopez; jury trial set for 9:00 7/7/03 for Cuauhtemoc Gonzalez-Lopez (cc: all counsel, USPT, USP, USM) (CEL) (Entered: 05/08/2003)
05/12/2003		APPEAL Order from USCA USCA number: 03-2109 as to defendant: Gonzalez-Lopez The petition for writ of mandamus, and the motion for stay contained within it, are denied. (CEL) (Entered: 05/14/2003)
	* * * * *	
06/03/2003	204	MEMORANDUM, Opinion and Order: by Honorable Jean C. Hamilton denying motion to strike atty John

DATE	DOCKET NUMBER	PROCEEDINGS
		Fahle's motion for show cause as to defendant Gonzalez-Lopez and att Low [194-1] FURTHER ORDERED that Mr. Fahle shall file a concise pre-hearing brief discussing the legal basis for his motion by June 11, 2002. Any responses shall be filed by 6/18/03. (cc: all counsel, USPT, USP, USM) (CEL) (Entered: 06/04/2003)
		* * * * *
06/30/2003	247	ORDER by Honorable Jean C. Hamilton re [221-1] ORDERED that this case is set for hearing on 7/22/03 at 9:30 in the courtroom of the undersigned regarding the motions for sanctions by atty Stobbs; in-court hearing set for 9:00 2/7/03 (cc: all counsel, USPT, USP, USM) (CEL) (Entered: 07/01/2003)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
07/03/2003	259	MINUTES: before Honorable Jean C. Hamilton denying motion to continue trial setting as to defendant Gonzalez-Lopez [257-1], denying motion in limine as to defendant Gonzalez-Lopez [256-1], granting motion in limine re: testimony as to defendant: Gonzalez-Lopez [254-1] as to defendant Gonzalez-Lopez; Defendant Location: custody court reporter: Debbie Kriegshauser; proceedings started: 9:30am - ended: 10:00am (CEL) (Entered: 07/03/2003)
		* * * * *
07/07/2003	264	MINUTES: (day 1) before Honorable Jean C. Hamilton jury impaneled as to defendant Gonzalez-Lopez; Govt's evidence commenced but not concluded; Defendant Location: custody court reporter: Patti White; proceedings started: 9:00am - ended: 5:00pm (CEL) (Entered: 07/08/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
07/10/2003	268	MINUTES: (day 4) before Honorable Jean C. Hamilton Parties present for jury trial; Govt's evidence resumed and concluded; Oral motion of deft for judgment of acquittal at close of govt's case made and overruled; deft's evidence commenced and concluded; oral motion of deft for judgment of acquittal at close of all the evidence made and overruled; arguments of counsel made; jury charged and retires to consider its verdict; ordered that alternate jurors be excused; jury returns; verdict of guilty on count 1 returned; on motion of deft, jury polled; sentence deferred to 9/26/03 at 9:00 am; PSI ordered; Probation notified by email of sentencing date; exhibits retained by counsel; Interpreters;

DATE	DOCKET NUMBER	PROCEEDINGS
		Blyelock and Orozco for trial; K. O'Hanlon sworn for use with deft's witness finding Cuauhtemoc Gonzalez-Lopez (1) count(s) 1 guilty; objection to PSR set for 9/22/03 for Cuauhtemoc Gonzalez-Lopez as to defendant Gonzalez-Lopez; Defendant Location: custody court reporter: Patti White; proceedings started: 8:45am - ended: 4:40pm (CEL) (Entered: 07/11/2003)
07/10/2003	269	VERDICT as to Cuauhtemoc Gonzalez-Lopez: guilty as to count 1 (CEL) (Entered: 07/11/2003)
		* * * * *
08/26/2003	303	MEMORANDUM and Order: by Honorable Jean C. Hamilton ORDERED that John Fahle's motion for continuance, motion to withdraw and motion for show cause hearing a/k/a motion for sanctions is Granted. FURTHER ORDERED that

DATE	DOCKET NUMBER	PROCEEDINGS
		Joseph H. Low, IV shall pay John Fahle's atty's fees, expenses and costs associated with his motion for continuance, motion to withdraw and motion for show cause hearing a/k/a motion for sanctions filed 4/25/03. FURTHER ORDERED that the clerk of court shall forward a copy of this memo and order to the Office of Reportable Actions, Satte Bar of California, 1149 South Hill Street, Los Angeles, CA 90015-2299. re [183-1], re [183-2], [183-3] (cc: all counsel, USPT, USP, USM and Office of Reportable Actions and Joseph Low) (CEL) Modified on 08/27/2003 (Entered: 08/26/2003)
		* * * * *
09/26/2003	323	JUDGMENT by Honorable Jean C. Hamilton as to Cuauhtemoc Gonzalez-Lopez sentencing Cuauhtemoc Gonzalez-Lopez (1) count(s) 1. Deft. was found

DATE	DOCKET NUMBER	PROCEEDINGS
		guilty of count 1; Imprisonment for term of 292 months deft remanded; Supervised release for term of 4 years; special assessment of $100.00 due immediately., dismissing counts as to Cuauhtemoc Gonzalez-Lopez (1) count(s) 7. count 7 forfeiture , case terminated (cc: all counsel, USPT, USP, USM) (CEL) (Entered: 09/29/2003)
		* * * * *
09/14/2005	406	ORDER as to Cuauhtemoc Gonzalez-Lopez; IT IS THEREFORE ORDERED that defendant's motion to dismiss 398 is DENIED for the reasons set out herein; IT IS FURTHER ORDERED that the motion of counsel Joseph H. Low IV for leave to appear pro hac vice as counsel for defendant to represent him in this case is GRANTED; IT IS FURTHER ORDERED that this case is

DATE	DOCKET NUMBER	PROCEEDINGS
		RESET for trial October 17, 2005; IT IS FINALLY ORDERED that the findings and rulings herein shall take precedence over any other order issued by this Court which may be in conflict with this order; Jury Trial set for 10/17/2005 09:30 AM in Courtroom 3N before Honorable Stephen N. Limbaugh; Signed by Judge Stephen N. Limbaugh on 09/14/2005; (DJO) (Entered: 09/14/2005)
		* * * * *
09/20/2005	407	Second MOTION for Speedy Trial Findings and Continuance by USA as to defendant Cuauhtemoc Gonzalez-Lopez, Jorge Alberto Guillen, Rodriquez Woods, Dewayne Welch, Julio Cesar Guillen, Jorge E. Guillen, Ubaldo N. Izaguirre-Carranza, Margarito Antonio

DATE	DOCKET NUMBER	PROCEEDINGS
		Beltran. (Attachments: # 1 # 2 # 3 # 4 # 5) (Becker, Tiffany) (Entered: 09/20/2005)
		* * * * *
10/06/2005	411	ORDER TO CONTINUE - IT IS THEREFORE ORDERED that the Government's request for a continuance is GRANTED and this case is REMOVED from the trial docket of October 17, 2005. IT IS FURTHER ORDERED that counsel for the Government shall notify this Court immediately when the United States Supreme Court has ruled on its Petition for Certiorari. If the Petition is denied, the Court will confer with counsel and set the case for a jury trial at the earliest convenient time for the defendant and

DATE	DOCKET NUMBER	PROCEEDINGS
		counsel. (per 18:3161) - Ends of Justice as to Cuauhtemoc Gonzalez-Lopez. Signed by Judge Stephen N. Limbaugh on 10/06/05. (ARL) (Entered: 10/06/2005)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 03-3487

UNITED STATES OF AMERICA

v.

CUAUHTEMOC GONZALEZ-LOPEZ

DOCKET ENTRIES

DATE	PROCEEDINGS AND ORDERS
3/8/05	THE COURT: Roger L. Wollman, Richard S. Arnold, Kermit E. Bye. OPINION FILED by Kermit E. Bye, Authoring Judge. PUBLISHED. [03-3487] [1875927] (dmh) [03-3487]
3/8/05	JUDGMENT: Roger L. Wollman, Richard S. Arnold, Kermit E. Bye. The judgment of the lower court is REVERSED and REMANDED in accordance with the opinion. [03-3487] [1875929] (dmh) [03-3487]
	* * * * *
5/19/05	JUDGE ORDER: denying petition for panel rehearing [1894354-1] and petition for rehearing with petition for rehearing en banc [1893609-1] filed by USA. [03-3487] [1904707] - Published Order. (dmh) [03-3487]

UNITED STATES SUPREME COURT

No. 05-352

UNITED STATES OF AMERICA, PETITIONER

v.

CUAUHTEMOC GONZALEZ-LOPEZ

DOCKET ENTRIES

DATE	PROCEEDINGS AND ORDERS
Jul 29 2005	Application (05A112) to extend the time to file a petition for a writ of certiorari from August 17, 2005 to September 16, 2005, submitted to Justice Thomas.
Aug 2 2005	Application (05A112) granted by Justice Thomas extending the time to file until September 16, 2005.
Sep 16 2005	Petition for a writ of certiorari filed. (Response due October 17, 2005)
	* * * * *
Jan 6 2006	Petition GRANTED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:03CR55JCH

UNITED STATES OF AMERICA, PLAINTIFF

v.

CUAUHTEMOC GONZALEZ-LOPEZ, DEFENDANT

July 7, 2003

Volume I

JURY TRIAL
THE HONORABLE JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: Ms. Tiffany Becker
Mr. Dean Hoag
Asst. U.S. Attorneys
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For Defendant: Mr. Karl Dickhaus
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1750 S. Brentwood
St. Louis, MO 63144

[p. 2, line 6]

THE COURT: This is cause No. 4:03CR55, United States versus Gonzalez Lopez. This matter is

here for trial this morning, and the jury panel is downstairs. Before the panel is brought up, I wanted to make a few comments. First of all, we have two interpreters. Could those interpreters stand and be sworn.

JOSE OROZCO and CURTIS BLAYLOCK
were duly sworn to translate English into Spanish and Spanish into English, as follows:

THE COURT: You may be seated. Mr. Low, I notice that you are at counsel table, and I think you need to stay in the back of the courtroom during this trial.

MR. DICKHAUS: Your Honor, we would request that Mr. Low, who is going to assist me at this trial, be allowed to sit just as any other assistants would be allowed to sit at the counsel table.

THE COURT: No, attorneys of record, clients and the agent for the Government, and—

MR. DICKHAUS: We have also requested that our case agent be allowed to sit at table when he arrives, Your Honor.

THE COURT: No, you have the defendant at your table.

MR. DICKHAUS: May we take a few preliminary matters beforehand?

THE COURT: We may.

MR. DICKHAUS: First, we would ask—the defendant would ask, in preservation of his 6th Amendment right, that Mr. Low's application for admission in this case, the denial be reconsidered, in light of the evidence that was presented, specifically

that the testimony of Ms. Van Arink was erroneous, and that the record now establishes conclusively that the allegations therein were false. And that there is no basis for denial of his petition.

We would ask that that be revisited and Mr. Low be admitted pro hac vice for this case.

THE COURT: Ms. Becker.

MS. BECKER: Your Honor, the Government would stand on the Court's record as well as the record made at that motion for sanction hearing.

THE COURT: I'm going to deny the motion. That matter is still under submission, and in due course, that matter will be taken up.

* * * * *

[p. 19, line 25]

THE COURT: Are there any other issues we need to take up before I bring the jury in to seat them, Mr. Dickhaus?

MR. DICKHAUS: If I may obtain some clarification from the Court on this particular issue. I've been informed by the U. S. Marshal Service that Mr. Low is not permitted to have any contact whatsoever with my client, and I'd like to make sure I understand the nature of the Court's order on this so we don't violate it.

THE COURT: I'll be happy to, Mr. Low can be present in the courtroom, as he is now in the back. He is not an attorney of record in this case. He is certainly welcome to visit your client, where he's being held, as would any family member or any other friend, but while we're in the courtroom, the marshals are responsible

for, you know, the security of this courtroom, so those folks who want to be in the courtroom can certainly be outside the well of the Court.

MR. DICKHAUS: I understand, and there's no prohibition against me speaking with Mr. Low, not during the course of proceedings but during recess.

THE COURT: During recesses and the noon hour, that's fine.

MR. DICKHAUS: I just want to make sure, Your Honor, because I don't want to step across the line.

THE COURT: No, I appreciate that. Mr. Low?

MR. LOW: Yes, ma'am, make sure I don't do anything wrong. Does that include I am not allowed to visit with him downstairs in the marshal's office?

THE COURT: That's up to the marshal's regulations and probably not. Usually when he's going to be down here during trial, he will be eating or having lunch, otherwise I suspect during the day, he's going to be up here.

MR. LOW: If he were available downstairs, you don't have a problem with that, okay?

THE COURT: Depending upon whatever the marshal's regulations for allowing visitors to see anyone being held down there and that is up to the Marshal Service.

MR. LOW: Yes, ma'am.

* * * * *

[Ms. Becker:]

[p. 35, line 12]

Officers conducted an interview specifically of Jorge Guillen and you will hear the testimony of Jorge Guillen where he admits to his involvement in the conspiracy, but is unwilling to take the whole responsibility for himself. He indicates to law enforcement officers that he's not the owner of that marijuana. He's not in charge of that marijuana. The defendant, Tomas, who he knew only as Tomas, was the owner of that marijuana, and he agreed to make a recorded telephone call to Tomas to prove that to the law enforcement officials.

Now Jorge Guillen is a Spanish speaker, and task force agent Mike Williams, you will hear testimony, also speaks Spanish and he conducted the interview of Jorge Guillen and arranged for the tape recorded telephone conversation to be made to Tomas, the defendant here in this case.

During that recorded telephone conversation, Jorge Guillen talked to Tomas, indicated that they had not finished the job, and you will hear testimony from Jorge Guillen that the job referred to moving marijuana. That when they would talk about moving marijuana, they would call it the job. They didn't come right out and say move the marijuana.

He indicated that he needed money from Tomas to pay his brothers for their assistance in the courier—carrying of these drugs from place to place and Tomas agreed to meet with Jorge Guillen.

Following that conversation, agent Mike Williams was present for that conversation and heard

Jorge's side of the conversation. He also then listened to the tape of that conversation.

Following that, deciding that Jorge, that they would then set up a controlled pickup of this money that Jorge had requested from Tomas. Tomas directed Jorge to meet him at a location, 7-11 location at Big Bend and Dougherty Ferry in West County, I think in the Valley Park area in 20 minutes, so things are, like I said, moving rapidly. There's a lot going on in this short period of time.

Task Force Agent Mike Williams gets in the Chevy suburban with Jorge Guillen. They arrive at the 7-11. Mike Williams, Agent Mike Williams is hidden in the back of the Chevy suburban but is able to peek out the window and view the meeting between Jorge and Tomas.

Tomas drives up to the location, Jorge gets out of the Suburban and into Tomas' vehicle and Jorge Guillen will tell you at that time Tomas retrieved a package from a compartment area of that vehicle.

Jorge Guillen will tell you that he handed —Tomas handed that package to Jorge. Jorge exchanged some conversation and then got back into the Chevy Suburban and drove away after giving Mike Williams, Agent Mike Williams, the package. That package was a Quaker Oatmeal box and it was heavily taped, but inside was found $9,715 in U.S. currency wrapped in tight plastic with the number 10 on the outside, roughly ten thousand.

* * * * *

[Mr. Dickhaus:]

[p. 44, line 15]

And all the evidence will show is that Mr. Gonzalez Lopez came to that 7-11 and delivered money. The evidence won't show he knew why. The evidence won't show that he had any drugs or guns or anything else at his house. The evidence will show beyond a reasonable doubt, which is not our standard of proof, that he was just a blind mule.

He may or may not have even known what he was doing. He may or may not have even known that it may have been related to some illegal activity. We don't know. We weren't there, and no one will.

* * * * *

[p. 129, line 23]

MR. DICKHAUS: Your Honor, I want to put on the record that when we went down to lunch, the U.S. Marshal's Office is still not allowing Mr. Low access to his client. Despite your admonition that he can see them.

THE COURT: He can see them under whatever rules they are. He is not an attorney of record in this case.

MR. DICKHAUS: I understand.

THE COURT: He may not be under attorney rules, and they've got a problem.

MR. DICKHAUS: I just want to put it on the record that they're declining his ability to see his client.

THE COURT: Well it's his client under his theory of this, but as far as this case goes at this point, Mr. Low is not an attorney of record, so that may make a difference to the marshals.

MR. DICKHAUS: I understand it doesn't change the attorney/client relationship. His ability to practice in this Court, I am in agreement with Your Honor on this, but he's still his attorney and I needed to place that on the record.

THE COURT: That's fine.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:03CR55JCH

UNITED STATES OF AMERICA, PLAINTIFF

v.

CUAUHTEMOC GONZALEZ-LOPEZ, DEFENDANT

July 8, 2003

Volume II

JURY TRIAL
THE HONORABLE JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: Ms. Tiffany Becker
Mr. Dean Hoag
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St. Louis, MO 63102

For Defendant: Mr. Karl Dickhaus
Suite 201
1750 S. Brentwood
St. Louis, MO 63144

[p. 2, line 6]

THE COURT: Let the record reflect the jury is not in the courtroom. At this time, I understand there is a matter, Mr. Dickhaus, to take up with the Court.

MR. DICKHAUS: Yes, I did. Thank you, Your Honor. I would like the record to reflect that last night, when we went to the Farmington detention facility to visit Mr. Gonzalez Lopez, that the facility told us that the U.S. Marshal Service had instructed them that I could not bring in Mr. Low, our trial consultant, or any other member of the defense team so that Mr. Gonzalez could meet with us as he had done previously to help assist us in his defense.

And they said that was on a direct order from the marshal's office here, that the supervisor, Christy, I believe is her name, had called them and ordered that these people be not permitted to see Mr. Gonzalez. And that we would make an objection on the record that that's interfering with Mr. Gonzalez's 6th amendment right to participate in his defense and to a fair trial.

THE COURT: Ms. Becker, do you have anything.

MS. BECKER: Your Honor, I have no prior knowledge of that, and we would not have objection to Mr. Low seeing him at Farmington at all.

THE COURT: As I indicated yesterday, I have no objection to Mr. Low, or others, visiting him according to whatever the institution's regulations are and that included the Marshal Service here in the building. If there is a problem, I could talk with the Marshal Service later today to see what the situation is.

MR. DICKHAUS: We would appreciate that, because I understand the marshals have the right to

regulate their facility in this building according to regulations, although I would note also for the record that they have refused to provide us with those regulations. They've just asserted that that's what they now are but I'm assuming, just to be fair to them, that's their policy, that's fine.

But the Farmington facility is not a facility of the U.S. Marshal Service. They have a contract.

THE COURT: They have a contract so I don't know what the situation is so these are still federal prisoners and there may be a situation, I simply don't know.

MR. DICKHAUS: I understand and I would appreciate if Your Honor would ask the Marshal Service to clarify that for us.

THE COURT: Okay. All right. Anything else before we bring the jury in?

* * * * *

[p. 123, line 5]

THE COURT: Let the record reflect the jury is not in the courtroom. Mr. Dickhaus, did you have a matter to take up.

MR. DICKHAUS: Very briefly, I just wanted a clarification so I could be sure I'm in compliance with the rules of the Court. I've been informed by the marshals that I am not allowed to communicate with Mr. Low during the proceedings? Is that the correct ruling of the Court.

THE COURT: Well you can communicate. I don't have any problem.

MR. DICKHAUS: Well can he hand me a note?

THE COURT: No, I don't think handing notes. I don't know what communications you're talking about. I would assume during the pendency of this while we are in the courtroom, you ought to be watching the witnesses.

MR. DICKHAUS: I understand that, Your Honor.

THE COURT: I think you ought to wait for those things while we're in recess.

MR. DICKHAUS: Just trying to clarify so I don't run afoul of this Court. Okay.

THE COURT: Okay. Anything further?

MR. DICKHAUS: Nothing further.

* * * * *

[Ms. Becker questions Jorge Alberto Guillen]

[p. 159, line 5 direct examination of Jorge Guillen by Ms. Becker, cont']

Q. After you had talked with Agent Williams for a while, did he ask you if you would place a call to Tomas?

A. Yes, he asked me did I want to, you know, do a, to set up, to call Tomas, so I decide to do it.

Q. And was that phone call recorded?

A. Yes, it's a phone call recorded with a tape, a small recorder like this big and regular tape.

Q. If I can hand you what's been marked Government's exhibit 15.

A. Yeah this is the tape where we recorded by that time.

Q. How do you recognize that as the same tape?

A. Because it was a number, his number in here, and some letters that is not mine, but the other side, it was my initials. JG.

MS. BECKER: Your Honor, I request admission of Government's exhibit 15.

THE COURT: 15 is admitted.

MS. BECKER:

Q. Can you describe the conversation you had with Tomas during that recorded telephone call?

A. Yes, I remember.

Q. As much as you remember?

A. I remember I think all about we talking to, but I record on the phone.

Q. Why don't you tell us?

A. I was tell Tomas, "Tomas, can you give me some money to pay my brothers?" He say, "Are you do the job already?" The job is the marijuana, so if you move it, if you weigh it, you know, and packing and all the stuff, and I tell Tomas, "No, because one of my daughters," because I bring my daughters, he don't even know I bring my daughters because I don't want him to let know him, because I don't want he look at my family, in case anything happen, he don't know anything about my family. That's why I tried to protect my family to beginning.

Q. Now you mentioned that you said that he said, "Did you finish the job?" He didn't say did you weigh and package the marijuana?

A. No he don't say that. He don't mention that because he don't want to be involved in the conversation about anything.

Q. So then you mentioned to him that you had not finished the job and did you give him a reason why?

A. Yeah I give the reason because I was tell him my daughter, my little daughter, who was supposed to, that she's going to be her birthday next day Monday night December 9, I was tell him, "Sorry Tomas, we don't do nothing because my daughter is getting sick. She have like convulsions," and well one year before, that happened to my daughter, so I don't like it. I know that happened before to my daughter, but that time, it was nothing doing with this.

So I tell Tomas —

Q. You said that hadn't happened. Why did you tell him that?

A. I was me and Detective Mike Williams would decide to put an excuse to Tomas, because at that moment, I don't have nothing in my head, to think about what can I do.

Q. Why did you need an excuse?

A. Because Tomas is going to be mad because it was too late, and it was the job is there two days already, Saturday and Sunday. Tomas, he was telling me, "Why, I mean why you waiting to let me know about this time?" I said "No, because I was in the hospital with my daughter."

"So what happened to your daughter?" I was telling him that she had like convulsions. I remember that, in the tape. So he told me, "What you going to do?" I say, "I'm going to do the job tomorrow morning. My daughter she getting better now," that I need some money to pay my brothers and Dewayne.

So he told me, "Okay. But where you are?" I say, "I'm over here close by the hotel where we meeting sometimes."

Like I say, "How long do you think it would take?" "About 20 minutes."

I was tell him, "Okay." He told me, "Give me a call before you get exit."

Q. Before you?

A. Before you take the exit.

Q. What exit did he tell you to go to, if you remember?

A. I don't remember sorry about that. That I know it was after 64—which one is first 64 or 44 and 270?

Q. I'm not sure. First from which direction?

A. That exit is two exits after the 44 or 64, and then when I was ready to take the exits, I called Tomas.

Q. Did he give you directions to that location?

A. I was not there before. I know how to get there but I never paying attention, because I not interested to be in there, and I just go drop the money, sometimes, or sometimes, you know, meet him over there, but you know but that night, I just go, you know, call him before I get there.

Q. Specifically, where did he tell you to meet?

A. He told me, "Meet me over there by McDonald's," but I tell him it was too late already, so he said, "No meet me over there by 7-11 the gas station."

Q. What did you mean that it was too late to meet at McDonald's?

A. Because it was too late to meet at McDonald's. Nobody is there, by that time.

Q. So he said to me at 7-11?

A. Yes.

Q. What did you do? Did you have any further conversation?

A. By the phone?

Q. On the phone.

A. No, after he told me call me before you get exit, I was calling again, and I tell Tomas, "I'm ready to take the exit."

* * * * *

[Mr. Dickhaus questions Jorge Alberto Guillen]

[p. 180, line 4 cross-examination of Jorge Guillen, by Mr. Dickhaus cont']

Q. Let me go back to 1998. Did you have a car that was wrecked?

A. Yes, I do.

Q. You wrecked it in fact?

A. Yes, I do.

Q. And you left the scene of the accident?

A. Yes, I do.

Q. And you had your wife report the car stolen?

A. Yes, but I have a reason. For anything.

Q. But you asked your wife to report the car stolen?

A. Yes, but at anything doing.

Q. Then you filed a complaint with the insurance company to get paid for a car you wrecked, right?

A. Yes.

Q. The car wasn't stolen, was it?

A. Yes, sir.

Q. It wasn't stolen?

A. It wasn't stolen.

Q. You just wrecked it?

A. Yes, sir.

Q. And you lied to the insurance company?

A. Yes, sir.

Q. And you lied to the police?

A. Yes, sir.

Q. And in fact, you were prosecuted for making a false insurance—for insurance fraud for that false statement, weren't you? They wrote it up in the Chicago Tribune, correct?

MS. BECKER: Your Honor, I don't have a copy of that Chicago Tribune.

A. No that was not right. You are wrong about that. Sorry. That does not show up in the Chicago Tribune, because the insurance, they take the sharp from me for the comboseum (PHONETIC) for fraud.

INTERPRETER: Because of fraud.

A. So the insurance take the case, out of my case, so I was told that, you know, the officer, what happened exactly, because the only thing that I want is they can fix my car, not to pay the whole car, because the car was new, but I know it was made a mistake, like any human.

Q. Well let's see—

A. So you want to look at me like I was liar. You know, I think anybody can lie for one big reason in their life.

Q. Oh I understand. Now let me ask the questions though please.

A. Go ahead.

Q. It was a 1995 Toyota Tercel?

A. Yes, sir.

Q. You drove it into a parked car in Waukegan and fled, is that correct?

MS. BECKER: Objection, Your Honor. May we approach?

(THE FOLLOWING CONVERSATION WAS HELD AT THE SIDE BAR OUT OF THE HEARING OF THE JURY.)

MS. BECKER: Your Honor, I think he's entitled to impeach him with that conviction but not with hearsay from a newspaper article.

MR. DICKHAUS: Your Honor, I haven't admitted the newspaper article for its truth. I'm just asking him questions.

MS. BECKER: Well you're getting into the substance.

THE COURT: I'm going to sustain the objection. If there's a depiction fine; that's fair game.

MR. DICKHAUS: I don't quite understand the objection or the scope of the objection.

THE COURT: We don't put in—you can impeach him with conviction, that's no problem. But bringing in a newspaper article is not going to do it.

MR. DICKHAUS: I understand. I'm not going to admit the article.

THE COURT: Not admit it. We don't talk about it, okay. The conviction is fair, and that's it.

MR. DICKHAUS: The facts surrounding the conviction as well?

THE COURT: Read the rule, Mr. Dickhaus.

MR. DICKHAUS: I'm just asking the facts.

THE COURT: No, we want just what the conviction was for. That's all. You can give when it is and I assume you have the certified authenticated copy, do you?

MR. DICKHAUS: Pardon? We're getting a copy of the certified authenticated copy. We found it today. It wasn't turned over.

MS. BECKER: The fact of it was turned over last Tuesday, for the record.

MR. DICKHAUS: It's not enough time to get one from Cook County, Your Honor.

THE COURT: Read the rule.

(THE SIDE BAR CONFERENCE WAS CONCLUDED.).

MR. DICKHAUS:

Q. Did you plead guilty to insurance fraud?

A. Yes, I do.

Q. Did your wife also plead guilty for her involvement in insurance fraud?

A. Yes.

MS. BECKER: Objection; relevance.

THE COURT: Sustained.

MR. DICKHAUS: Withdrawn.

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[p. 232, line 3 cross-examination of Jorge Guillen, by Mr. Dickhaus cont']

Q. I don't understand. I've been through all your statements and your sworn testimony and every time you have ever met Tomas, you've taken him money, isn't that true?

A. Yes, I do.

Q. But this time you pick up the phone at 2:00 in the morning, call him, and he runs out and brings you money?

A. Yeah because I would tell him, like I say, I didn't collect no money and he believe it to me, because I'm not going to lie to him. When I would collect some money, I give to him.

Q. You're supposed to collect the money from someone else, right?

A. Yes but I was tell him the truth. I was lying to him, that I don't receive nothing from nobody, so that's why detectives and me, you know, we do what you do, to ask him if he got to give me some money to pay my brothers and next day.

Q. And he didn't ask you what happened to the money you were supposed to collect?

A. He asked me but I was tell him nobody give me money today because I was late. You know, that's what I tell him.

Q. And he didn't ask you why can't I just bring the money in the morning?

A. No, yes, he asked me, but I was telling him no because my brothers, they already did their job, and my brothers, they want to leave.

Q. At 2:00 in the morning?

A. No, the next day. In the morning.

* * * * *

[p. 240, line 13 cross-examination of Jorge Guillen, by Mr. Dickhaus, cont']

Q. And in the past, you've lied to the police, for your own profit, haven't you?

A. Just one time, but like I said.

Q. Just one time?

A. I mean.

Q. But you're telling the truth today?

A. yeah, I was telling the truth.

* * * * *

[p. 249, line 13 re-cross examination of Jorge Guillen, by Mr. Dickhaus, cont']

Q. I'm sorry, I completely lost you on this one. I'm talking about the telephone call you and Detective Williams made to Tomas. Do you remember that phone call?

A. Yeah, we called him, and I was telling Tomas, you know what, I need to give me some money.

Q. Right and on that phone call, the reason you didn't ask Tomas to bring you drugs was because you knew Tomas didn't have drugs to bring you?

A. He had the drugs already in St. Louis.

Q. Because in fact Tomas worked for you, didn't he?

A. What is that?

Q. Tomas worked for you, didn't he?

A. Hell no. Excuse me, but that is impossible. You think how I going to have proving the defendants?

Q. Excuse me, I need to ask the question.

A. I was answer. How I going to have a public defender.

Q. Your answer is no? Is your answer no?

A. What was the question?

MR. DICKHAUS: That's withdrawn.

A. I mean how Tomas going to be the boss.

MR. DICKHAUS:

Q. There's no question pending. Now do you know where you got the money, where the money came from?

A. What money?

Q. That Dewayne paid you for the drugs?

A. I don't have an idea, but Dewayne have some people.

Q. Dewayne had people as well?

A. Yes.

MS. BECKER: Your Honor we're beyond the scope of the redirect.

THE COURT: Sustained.

MR. DICKHAUS: I have no more questions.